and Recommended Order of the Trial Examiner in the case involving Petitioner, American Guild of Variety Artists, is reported at 176 N.L.R.B. No. 77. The Decision and Order of the Board and the Decision and Recommended Order of the Trial Examiner in the case involving Petitioner, American Federation of Musicians of the United States and Canada, AFL-CIO, is reported at 178 N.L.R.B. No. 115.

JURISDICTION

The jurisdictional requisites are adequately set forth in the petition.

QUESTIONS PRESENTED

1. Whether artists, pursuant to individual contracts, entertaining on a short-term basis at clubs, and such artists having control over the contents and means of presenting their particular performances, are independent contractors.

2. Whether a demand by a musician's local union and the federation with which the local is affiliated, that such independent contractors who belong to another local cease performing for such clubs and that the employees of such independent contractors cease rendering service under threats that such independent contractors and their employees' failure to obey such demands will subject them to fines, expulsion and/or other disciplinary action, constitute threats, coercion or restraint of such independent contractors within the meaning of Section 8(b)(4)(ii)(B) of the National Labor Relations Act, and inducement or encouragement of the employees of such independent contractors to engage in a strike or a refusal to perform services within the meaning of Section 8(b)(4)(i)(B) of the said Act.

3. Whether, in the case of Petitioner, American Guild of Variety Artists, which was not involved in the primary dispute, a demand by that union to the independent contractor artists who are members of that union to cease performing for such clubs or be subject to fines and/or expulsion constitutes a threat or coercion within the meaning of Section 8(b)(4)(ii)(B) of the said Act.

4. Whether such independent contractor artists are neutral persons with respect to a labor dispute between the clubs at which they perform and another union of which they are not members.

STATUTE INVOLVED

The pertinent provisions of the Labor Management Relations Act 1947, as amended [29 U.S.C. § 158(b)(4)(i) and (ii)(B)] are set forth in the Petition at pp. 3-4.

STATEMENT OF THE CASE

A. The Trial Examiner's Decision and the Board's Decisions and Orders

The cases involving the two petitioners were tried separately before two different trial examiners. The Board determined them separately.[1]

(1) The American Guild of Variety Artists Case

The case of the American Guild of Variety Artists (AGVA) was tried first. The Trial Examiner found and concluded that the clubs involved, Harrah's and Sparks Nugget, Inc., were engaged in commerce within the meaning of the Act; that each of the artists involved were independent contractors in their relationship with the clubs, and that they were persons or employers within the meaning of Section 2(6) and (7) and 8(b)(4) of the National Labor Relations Act. He further found and concluded that AGVA had, by its telegrams, threatened, restrained and coerced these artists with fines, censure, suspension or expulsion, an object thereof being to force or require them to cease doing business with Harrah's and Sparks Nugget, Inc., in violation of Section 8(b)(4)(ii)(B) of the Act. The Trial Examiner recommended that the Board order AGVA to cease and desist from

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1. The case involving the musician's unions included both the American Federation of Musicians and Reno Musicians Protective Association No. 368. The latter has not petitioned for a writ of certiorari and, therefore, raises no issue concerning the decision of the Court below. Neither has the Solicitor General filed a petition, hence the Board is also bound by the decision below. *Ryerson v. U.S.* (1941), 312 U.S. 405, 61 S.Ct. 656; *LeTulle v. Scofield* (1940) 308 U.S. 415, 60 S.Ct. 313.

threatening, coercing or restraining the artists, or any other person engaged in commerce or in an industry affecting commerce, for an object of forcing or requiring said artists or said person to cease doing business with Harrah's or Sparks Nugget and to post appropriate notices. (Petition, pp. 23a-37a)

Upon exceptions, the Board concluded, contrary to the Trial Examiner, that AGVA's action in sending the telegrams to the artists called for nothing more than a refusal to cross the picket lines of the striking musicians and that such action by AGVA constituted permissible primary activity. The Board did not deal with the question of whether the artists were independent contractors, stating "in view of our disposition of the issues raised by the allegations of the complaint, *infra*, we deem it unnecessary to decide whether any of the star entertainers involved herein, or all of them . . . are employees within the meaning of Section 2(3) of the Act. . . ." (Petition, p. 19a, ftn. 1) The Board further concluded that the performances of the artists were inextricably involved with and necessary to the normal operations of the casinos of the clubs and dismissed the complaint in its entirety. (Petition, pp. 21a-22a)

2. The American Federation of Musicians Case

In this case, which was tried after the AGVA case, the Trial Examiner found and concluded that Harrah's and the Ponderosa Hotel Co. were each engaged in commerce within the meaning of the Act; that the artists there involved were independent contractors and that the musicians accompanying these artists were employees of these artists; that the artists were persons and employers engaged in commerce or in an industry affecting commerce within the meaning of Section 2(6) and (7) and 8(b)(4) of the Act. He further found and concluded that the record unquestionably established that the American Federation of Musicians and the Reno Musicians Protective Association No. 368 had threatened the artists and their employees with expulsion or disciplinary action for performing or continuing to perform

services for a primary employee with whom those two unions had a labor dispute.

Since he decided the case after the Board had rendered its decision in AGVA, the Trial Examiner felt bound thereby, and recommended dismissal of the complaint. (Petition, pp. 41a-52a)

Upon exceptions by the General Counsel of the Board and Harrah's the Board adopted the findings, conclusions and recommendations of the Trial Examiner, except that differently than the Trial Examiner, the Board found it "unnecessary to consider whether these individuals were employees or independent contractors." (Petition, p. 40a, ftn. 1)

B. The Decision of the Court Below

Harrah's, as the intervenor in the Board proceedings, petitioned for review of both decisions by the Board in the Court of Appeals for the Ninth Circuit. That Court, in a thorough opinion reviewing all of the evidence and after full consideration of the applicable statutory and decisional law, concluded, as did the Trial Examiners, that the artists were independent contractors, that they were neutral persons within the meaning of the Act, and that the telegrams to both the artists and the employees of the artists, subjecting them to fines, expulsions or other disciplinary action if they did not obey the demands of the petitioners, "were clearly intended to and did threaten, coerce, and restrain an employer where 'an object' thereof was to force or require that employer to cease doing business with Harrah's. . . ." (Petition, p. 11a)

Contrary to the oblique statement in the Petition (p. 6, ftn. 7), the record did not establish that the entertainment brought patrons into gamble and "thus providing revenue to the casinos." The record disclosed that Harrah's engaged in business at Reno and Stateline [Tahoe], Nevada where it operated restaurants, bars and gambling casinos (R. 6-7, 13, 38; Tr. 8-9). Their primary source of income is from the operation of the gambling casinos. They also provide other services, including top-name entertain-

ment and dining facilities. There is no requirement that persons dining in the restaurants or watching the entertainment must also use the gambling facilities in the casinos. The artists perform at Harrah's in either the South Shore Room or Lounge at Stateline or the Headliner Room or Lounge at Reno. Artists perform at the Sparks Nugget in the Circus Room. These rooms are physically isolated from the casinos so that persons using the gambling facilities cannot simultaneously watch the entertainment in these rooms. The Lounges are located in the casino area and entertainers performing in the lounges can be seen from some parts of the casino (Tr. 70, 167). The gambling facilities, and certain of the restaurants, operate 24 hours a day whether or not there is entertainment in the South Shore Room, or the Headliner Room, or the Circus Room. Entertainment in these rooms is generally limited to between the hours of 8:00 p.m. and midnight (Tr. 75-76, 167-168).

ARGUMENT

The issue in this case is uniquely narrow and involves a question of fact, which no amount of strained semantics or improper injection of a non-existent constitutional question can convert it into one warranting review by this Court.

We are here concerned with one real issue, i.e., whether unions which threaten and coerce neutral employers and the employees of those neutral employers by threats of fines, expulsion or other disciplinary action, with an admitted object of forcing or requiring such neutral employers to cease performing services for the primary employer with which one of the unions has a dispute, are in violation of the National Labor Relations Act.

These cases do not in any sense involve a determination of a federal question in a way in conflict with applicable decisions of this Court; nor does it present an issue of general importance. The facts in these cases disclose a typical and classical secondary boycott situation. It grew out of a dispute between the Reno Musicians Protective Association No. 368, which has not petitioned for

certiorari, and Harrah's and the Sparks Nugget, which resulted in Local No. 368 placing pickets at the clubs. Local No. 368 enlisted the aid of the AFM and AGVA. The action taken by these unions against the independent contractor artists and their employees has been delineated above.

The record, on the issue of whether these artists are independent contractors, is clear and overwhelming in establishing that they are such. These entertainers, referred to in the entertainment industry as "stars," such as Tennessee Ernie Ford, Dinah Shore, Sid Caesar, Judy Lynn, et al., perform in various parts of the world and in various places and media, such as television, films, nightclubs, coliseums, rodeos, et cetera. They have their own staffs, their own managers, and even their own press agents. They maintain offices, and some of the stars are incorporated. They decide what their performances will be and how it will be presented. They select their own material and music. They hire their own employees, including musicians. They maintain their own payrolls, make the usual withholding tax and other deductions, and pay the required employer's taxes (R. 42-43; Tr. 10-13, 13-23, 26-28, 31-42, 48-54, 64-65, 69-70, 316-323, 330-332, 342-345, 352).[2]

The issue here does not involve the proviso to Section 8(b)(4)(B). This was not an issue which the Board decided, nor was it raised in the Court below. As the Court below stated, the question of whether the primary picketing was unlawful was not involved in the Board proceedings, nor was there any attack on the picketing itself in the matter before the Court (Petition, p. 11a).

What has here happened, and as the Solicitor General apparently recognized, the Board reached its determination on an

2. The references are to the situation concerning Judy Lynn which, as the record shows, is representative of the situation with respect to the other artists. Not to make this brief unduly prolix, we have refrained from setting forth the numerous record and transcript references with respect to the others.

erroneous reading and misapplication of this Court's opinions in *General Electric*[3] and *Carrier*[4] to the facts in the instant cases.

On the facts here, the decision of the Court below was manifestly correct. There is no conflict with any decisions of this Court. On the contrary, the decision of the Court below is in harmony with the decisions of this Court. *N.L.R.B. v. Local 825, International U. of Operating Eng.* (1971), 400 U.S. 297, 91 S.Ct. 402, 406-407, in which this Court distinguished the *General Electric* and *Carrier* cases. See also, *National Labor Rel. Bd. v. Denver Bldg. & Const. Tr. C.* (1951) 341 U.S. 675.

Neither is there any First Amendment nor any other constitutional issue involved, nor any important question of Federal law requiring decision by this Court.

I

THE DECISION BELOW IS CLEARLY CORRECT

Substantial evidence on the record as a whole supports the findings and conclusions of both the Trial Examiners and the Court below, that the artists are independent contractors and that the musicians accompanying these artists are their employees.[5]

With respect to independent contractors, this Court, in *N.L.R.B. v. United Insurance Company of America* (1968) 390 U.S. 254, 256, 88 S.Ct. 988, 989-990, said:

> "...Congress passed an amendment specifically excluding any individual having the status of an independent contrac-

3. 366 U.S. 677.
4. 376 U.S. 492.
5. In the Petition (p. 6, ftn. 8), it is stated that the Board in another case, *Reno Musicians Local 368*, 170 N.L.R.B. No. 56, decided that the clubs and not the orchestra leaders employed the musicians. The Board there dealt with so-called house bands and did not deal with or decide that the clubs were the employees of the sidemen (musicians). The Board dealt only with and held that the orchestra leader of the house band was an employee of the club. In a case similar to the instant cases, the Board held the entertainers to be independent contractors and not employees of the symphony which had engaged their services. The Board also found the union involved to have violated 8(b)(4)(ii)(B). *American Guild of Musical Artists, AFL-CIO*, 157 N.L.R.B. 735, 740-742.

> tor' from the definition of 'employee' contained in § 2(3) of the Act. The obvious purpose of this amendment was to have the Board and the courts apply general agency principles in distinguishing between employees and independent contractors under the Act."

Applying the general agency principles to the facts here developed, it is crystal clear that both the Trial Examiners and the Court below were correct in finding the artists to be independent contractors. Petitioners do not appear to be questioning this determination by the Court below.

This, then, leads us to what transpired, which brought petitioners afoul of the Act.

Although not directly involved in the primary dispute, AGVA sent telegrams to those of its members who were performing or had agreed, pursuant to contract, to perform at the clubs involved. Tennessee Ernie Ford, Sid Caesar and Gaylord and Holiday were sent telegrams by a national officer of AGVA reading:

> "This is official notice that the AGVA National Board has voted to approve the AFM strike and to honor the AFM picket lines in Reno and Tahoe. You are therefore advised that, according to AGVA Constitution, you are not to perform in any of the Reno-Tahoe establishments where AFM is on strike."

Dinah Shore and Ford were also sent telegrams by the San Francisco Branch Manager of AGVA. The one to Shore stated:

> "AGVA National advisors are not to perform at any Reno-Tahoe establish presently strick AFM or they are in violation of AGVA Constitution."[6]

The one to Ford stated:

> "AGVA National advises no acts are to perform at any Reno-Tahoe establishment presently struck by AFM or they are in violation of AGVA Constitution."

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6. Errors in the original. For telegrams, see Petition, p. 2a, ftn. 1.

As stated in the petition (p. 5, ftn. 4), failure to heed the orders in the telegrams would subject these independent contractors to various actions by the union, including fines, suspension, censure or expulsion. For disciplinary provisions in AGVA's Constitution and By-Laws, see Petition, page 3a, note 2.

With respect to the AFM, it sent telegrams, letters and notices to those independent contractor artists and their employees who were members of the AFM informing them of the existence of the dispute and of the placing of the clubs on both the AFM and the Local's unfair list and ordering them to cease their services to the struck clubs, even though neither these artists nor their employees were members of the Local which was involved in the primary dispute. These telegrams, letters and notices called attention to the AFM's By-Laws, which provided that any member who performed services for any person, organization or establishment placed on the national unfair list shall be subject to expulsion and that "they can only be reinstated under such conditions as may be imposed upon them by the International Executive Board." (Petition, pp. 4a-5a and ftn. 3).

As the Court below points out, not only were these threatening telegrams, letters and notices sent, but disciplinary action was taken against those neutral employers who did not cease to render services to the struck clubs. Such action was taken against two members of the AFM, Judy Lynn and Ronnie Gaylord. Also, disciplinary action was taken against Judy Lynn's employees (Petition, p. 5a).

We thus have here a typical case of secondary boycott activity through threats and coercion of not only the neutral employers and their employees, but actual carrying out of the threats through disciplinary proceedings. Admittedly, an object of such threats and coercive conduct was to force and require the neutral employers to cease doing business with the clubs and to induce and encourage the employees of such neutral employers to engage in a strike or a refusal to perform services. These acts and conduct, as rightfully found by the Trial Examiner in the AGVA case, and as found by

the Court below in both cases, constitute violations of Section 8(b)(4)(i) and (ii)(B) of the Act.

II

THERE IS NO CONFLICT WITH DECISIONS OF THIS OR ANY OTHER COURT

In their "questions presented," petitioners do not assert any conflict of decisions. In their "reasons for granting the writ," they claim a conflict with principles announced in decisions of this Court and with decisions of three other courts of appeals.

This does not comply with the rules of this Court. Rule 23.1(c), dealing with questions presented for review, in its pertinent part, states: ". . . only the questions set forth in the petition or fairly comprised therein will be considered by the court." Neither of the two questions presented deal with any alleged issue of conflict with the decisions of this or any other court, nor can it be said that such issue is fairly comprised in the questions presented (Petition, p. 3).

We, therefore, urge the Court not to consider the alleged issue of conflict of decisions.

In dealing with the question of whether the *General Electric* and *Carrier* decisions were controlling in light of the facts in the instant cases, the Court below did a thorough analysis of those cases in the context of the factual situation prevailing here. The Court below also dealt with other decisions of this Court pertaining to secondary boycotts. As it pointed out, this Court held, in considering the secondary boycott amendments of 1959, that Congress intended the secondary boycott to reach secondary employers as well as employees. Also, as the Court below observed, this Court held that threats directed to a secondary employer are encompassed within the secondary boycott proscription. *N.L.R.B. v. Servette, Inc.* (1964) 377 U.S. 46, 84 S.Ct. 1098. (Petition, pp. 9a-10a)

The analysis and distinguishing factual situation in *General Electric* and *Carrier* by the Court below are found in the Petition at pages 15a-16a. We shall not burden this brief or the Court with repeating them here. As the Court concluded, "we do not find those cases controlling in this fact situation."

Petitioners, whether designedly or otherwise, skirt the fact that the telegrams, letters and notices contained threats if the demands therein were not complied with by those to whom they were sent. In the first of the two questions presented and throughout their petition, they seek to make it appear that some innocuous telegram or notice was sent. As mentioned, these referred to provisions in the Constitutions and By-Laws of the unions. Why was it necessary to make such references if there were no threats intended. The persons to whom they were sent are not only knowledgeable but also rather sophisticated. They did not need to have an interpreter to know what the unions meant when they referred to their Constitutions and By-Laws. That these were not just polite "peaceful" communications is made quite clear by the disciplinary proceedings taken against two of the neutral employers and against employees. Who is seeking to deceive whom? And why?

Manifestly, under the facts, there were violations by petitioners of Sections 8(b)(4)(i) and (ii)(B). Manifestly, too, under the facts, the Court was correct in concluding that *General Electric* and *Carrier* were not applicable. As this Court stated in the recent case of *N.L.R.B. v. Local 825, International U. of Operating Eng., supra.* (406-207):

> "Congressional concern over the involvement of third parties in labor disputes not their own prompted § 8(b)(4)(B). This concern was focused on 'secondary boycotts,' which was conceived of as pressure brought to bear not 'upon the employer who alone is a party [to a dispute]. but upon some third party who has no concern in it' with the objective of forcing the third party to bring pressure on the employer to agree to the union's demands.
>
> "Section 8(b)(4)(B) is, however, the product of legislative compromise and also reflects a concern with protecting labor organizations' right to exert legitimate pressure aimed at the employer with whom there is a primary dispute. This primary activity is protected even though it may seriously affect neutral third parties. United Steelworkers of America, AFL-CIO (Carrier Corp.) v. NLRB, 376 U.S. 492, 502, 84 S.Ct. 899, 905, 11 L.Ed.2d 863 (1964); Union of Local 761, Interna-

tional Electrical, Radio and Machine Workers, AFL-CIO (General Electric) v. N.L.R.B., 366 U.S. 667, 673, 81 S.Ct. 1285, 1289, 6 L.Ed.2d 592 (1961).

"Thus there are two threads to § 8(b)(4)(B) that require disputed conduct to be classified as either 'primary' or 'secondary'. And the tapestry that has been woven in classifying such conduct is among the labor law's most intricate. See Brotherhood of Railroad Trainmen v. Jacksonville Terminal Co., 394 U.S. 369, 89 S.Ct. 1109, 22 L.Ed.2d 344 (1969). But here the normally difficult task of classifying union conduct is easy. As the Court of Appeals said, 'the record amply justifies the conclusion that [Burns and the neutral subcontractors] were subjected to coercion in the form of threats or walkouts, or both.' 410 F.2d, at 9. And as the Board said, it is clear that this coercion was designed to 'achieve the assignment of [the] disputed work' to operating engineers. 162 N.L.R.B., at 1621.

"Local 825's coercive activity was aimed directly at Burns and the subcontractors that were not involved in the dispute. The union engaged in a strike against these neutral employers for the specific, overt purpose of forcing them to put pressure on White to assign the job of operating the welding machine to operating engineers. Local 825 was not attempting to apply the full force of primary action by directing its efforts at all phases of Burns' normal operation as was the case in United Steelworkers of America, AFL-CIO (Carrier) v. NLRB, 376 U.S. 492, 84 S.Ct. 899, 11 L.Ed.2d 863 (1964) and Local 761, International Union of Electrical, Radio and Machine Workers, AFL-CIO (General Electric) v. NLRB, 366 U.S. 677, 81 S.Ct. 1291, 6 L.Ed.2d 592 (1961). It was instead using a sort of pressure that was unmistakably and flagrantly secondary. National Labor Relations Board v. Denver Building & Construction Trades Council, 341 U.S. 675, 71 S.Ct. 943, 95 L.Ed. 1284 (1951)."

It is to be noted that this Court distinguished *General Electric* and *Carrier* and said that the union was not attempting to apply the full force of primary action by directing its efforts at all phases of the primary employer's normal operation, but instead by coercion and threats using "a sort of pressure that was unmis-

takably and flagrantly secondary." There the neutral employers were subjected to threats. So, too, in the instant case. Not only, as mentioned, were there threats in the instant case, but there was even more coercive action. Disciplinary proceedings were taken against the secondary employers and employees.

Petitioners argue that the fact that the Solicitor General was requested by the Board to apply for certiorari is evidence that review by this Court is necessary. The fact is that after studying the record, the Solicitor General concluded against making application for certiorari. Petitioners state they have been advised that the Solicitor General agreed with the Board that the decision below was erroneous. We question that "advise." Since there is indulgence in such argument, we have been advised that the members of the staff of the General Counsel disagreed with the Board. We also are advised that two of the three Board members who made up the panel which decided the cases are no longer members. Obviously, the then General Counsel of the Board was of the opinion that the petitioners were in violation of the Act, for he issued the complaint against them.

In a footnote (Petition, p. 17, n. 17), petitioners equate this case with the situation in *United Steelworkers v. N.L.R.B.*, 376 U. S. 492. There the Solicitor General concluded "that other cases were entitled to priority in selecting the limited number of cases which the government [could] properly ask this Court to review." That is not the situation here. Petitioners appear to be "desperate men resorting to desperate measures," when they urge such argument here as a basis for review.[7]

III

THERE IS NO CONSTITUTIONAL QUESTION INVOLVED

Petitioners claim there is a First Amendment issue. There is none, and petitioners asserted no such issue either before the

7. In his application to this Court for an extension of time, the Solicitor General stated, *inter alia*, that he required additional time in order to complete his study of the Board's request. His study apparently led him to conclude against seeking certiorari.

Board or in the Court below. Petitioners are in no position to advance such argument now. *Adickes v. S. H. Kress & Co.* (1970) 398 U.S. 144, 90 S.Ct. 1598; *State v. Taylor* (1957) 353 U.S. 553, 77 S.Ct. 1037, 1039.

Moreover, to assert at this late point in the history of the National Labor Relations Act that telegrams, letters and notices containing threats to secondary employers and employees abridges free speech, casts even greater doubt on the quality of petitioners' position and demonstrates the complete lack of merit thereof. Can it be said that petitioners are contending that the media by which threats are made governs their protection under the Federal Constitution? This is what they appear to be saying. We submit that threats made in writing are just as violative of the Act as are those made orally. Under petitioners' theory, the very heart of the Act would be excised. Unions would then be left to engage with impunity in all sorts of threats and coercive conduct against not only secondary employers and employees of such employers, but against all employees.[8] Employers will be equally free to resort to threats. Labor management relations instead of being stabilized would become chaotic.

We are not here dealing with peaceful picketing or a broad ban against such picketing, which is the argument petitioners rely upon. We are here concerned with threats and action taken against secondary employers and their employees. We are here dealing with action by unions to involve neutral employers in a primary dispute. As the Court below pointed out, and as did this Court in *N.L.R.B. v. Local 825, International U. of Operating Eng., supra*, the basic justification for banning secondary boycotts is to protect neutral employers and their employees, "not themselves involved in a labor dispute, against economic coercion designed to give a labor union victory in a dispute with some other employer" (S.

8. If the First Amendment is applicable to threats against secondary employers and their employees, it would be equally applicable to threats against all employees.

Rep. No. 187, 86th Cong., 1st Sess. (1959), U.S. Code Cong. & Admin. News (1959) at 2382).

This Court has dealt with the free speech issue concerning the secondary boycott proscriptions both before and after the 1959 amendments. In *International Brotherhood v. National Labor Rel. Bd.* (1951) 341 U.S. 694, 71 S.Ct. 954, it was held that "the prohibition of inducement or encouragement of secondary pressure by § 8(b)(4)(A) carries no unconstitutional abridgement of free speech." *N.L.R.B. v. Servette, Inc., supra,* in which this Court pointed out that the 1959 amendments did not expand the type of conduct which § 8(b)(4)(A) condemned, "that is, union pressure calculated to induce the employees of a secondary employer to withhold their services in order to force their employer to cease dealing with the primary employer." This Court went on to state (377 U.S. 53-54, 84 S.Ct. 1103-1104):

> "Moreover, the division of § 8(b)(4) into subsections (i) and (ii) by the 1959 amendments has direct relevance to the issue presented by this case. It had been held that § 8(b)(4)(A) did not reach threats of labor trouble made to the secondary employer himself. Congress decided that such conduct should be made unlawful, but only when it amounted to conduct which 'threaten[s], coerce[s], or restrain[s] any persons; hence the addition of subsection (ii) . . . . Harmony between (i) and (ii) is best achieved by construing (i) to prohibit inducement of the managers to withhold their services from their employer, and subsection (ii) to condemn an attempt to induce the exercise of discretion only if the inducement would 'threaten, coerce, or restrain' that exercise."

It cannot be gainsaid that petitioners by their telegrams, letters and notices threatened, coerced and restrained the secondary employers and induced and encouraged the employees of such secondary employers to engage in a strike or a refusal to perform services. These telegrams, letters and notices, as previously shown,

threatened disciplinary action if the demands were not acceded to. Although such threats in themselves were violative of the Act, petitioner AFM went beyond and instituted disciplinary proceedings against two of the secondary employers and against the employees of one of them.[9]

IV

CONCLUSION

In the light of the facts in this case, and for the foregoing reasons, it is submitted that the petition for a writ of certiorari should be denied.

Respectfully submitted,

NATHAN R. BERKE
433 California Street
San Francisco, California
Counsel for Respondent
Harrah's Club, Inc.

September 17, 1971.

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9. As mentioned previously, the secondary employers against whom such proceedings were brought were Judy Lynn and Ronnie Gaylord. The secondary employees were all of the members of Judy Lynn's band.